HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

WRIT PETITION NO. 1589 OF 2002

Petitioners :1. Badal Gupta, aged about 27 years, S/o Late Radheshyam Gupta, Balaji PCO, Dongargaon, District-Rajnandgaon (C.G.).

2. Naresh Devangan, aged about 31 years, S/o Shri Jhagruram Dewangan, Tikripara, Chhuikhadan, District-Rajnandgaon (C.G.).

3. Vikas Bakshi, aged about 31 years, S/o Shri Ashok Kumar Bakshi, Rajmahal Chowk, Chhukhadan, Distt.- Rajnandgaon (C.G.).

4. Anil Pal, aged about 31 years, S/o Shri Shatruhan Pal, Tikripara, Chhuikhadan, Distt.- Rajnandgaon (C.G.).

5. Narayan Kamde, aged about 34 years, S/o Shri Dukhiram Kamde, Tikripara, Chhuikhadan, Distt.- Rajnandgaon (C.G.).

6. Smt. Uma Yadav, aged about 34 years, W/o Shri Gyan Singh Yadav, Tikripara, Chhuikhadan, Distt.- Rajnandgaon (C.G.).

7. Mukesh Kumbhkar, aged about 29 years, S/o Shri Kulpatram, Tikripara, Chhuikhadan, Distt.- Rajnandgaon (C.G.).

8. Chetan Anand Mahobia, aged about 28 years, S/o Shri Bholaram, Sanjay

Gandhi Marg, Chhuikhadan, Distt.- Rajnandgaon (C.G.).

9. Ku. Rachna Shrivastava, aged about 32 years, D/o Shri Rajendra Lal, Near Post Office, Chhuikhadan, Distt.- Rajnandgaon (C.G.).
10. Ku. Ritu Shrivastava, aged about 31 years, D/o Shri Rajendra Pal, Near Post Office, Chhuikhadan, Distt.- Rajnandgaon (C.G.).
11. Ku. Pratima Choubey, aged about years, D/o Shri Naval Kishor, Near Power House, Chhuikhadan, Distt.- Rajnandgaon (C. G.).
12. Smt. Khursheed Khan, aged about 29 years, W/o Shri Qasim Khan, Masjid Line, Pathanpara, Chhuikhadan, Distt.- Rajnandgaon (C.G.).
13. Ramdular Mandavi, aged about 36 years, S/o Shri Paltu Ram, Jamaat Para, Chhuikhadan, Distt.- Rajnandgaon (C.G.).
14. Smt. Kamlesh Soni, aged about 36 years, W/o Shri Rajendra Soni, Brahman Para, Ward No. 7, Chhuikhadan, Distt.-Rajnandgaon (C.G.).
15. Ku. Padma Devi Wasnik, aged about 30 years, D/o Shri Jethamal, Masjid Line, Pathanpara, Chhuikhadan, Distt.- Rajnandgaon (C.G.).
16. Ku. Neetu Nagarchi, aged about 26 years, D/o Shri Dhaniram, Jamat Para, Ward No. 3, Chhuikhadan, Distt.- Rajnandgaon (C.G.).

Versus

Respondents :1. State of Chhattisgarh,
Through the Secretary,
Department of Environment and
Town Planning, D.K.S. Bhawan,
Raipur (C.G.).

2. Collector
District Rajnandgaon (C.G.).

3. Nagar Panchayat Chhuikhadan
Tahsil Chhuikhadan, District
Rajnandgaon through Chief
Municipal Officer.

WITH

WRIT PETITION No. 1618 OF 2002

Petitioner : Ravindra Chawda, aged about 31 years, S/o Shri Amar Singh Chawda, Amli Para, Khairagarh, Distt.-Rajnandgaon.

Versus

Respondents : 1. State of Chhattisgarh,
Through the Secretary,
Department of Environment and
Town Planning, D.K.S. Bhawan,
Raipur (C.G.).

2. Collector
District Rajnandgaon (C.G.).

3. Nagar Panchayat Chhuikhadan,
Tahsil Chhuikhadan,
District Rajnandgaon
through Chief Municipal Officer.

3. Kumari Kiran Mall D/o Shri T.R.
Mall, R/o Dauchaura, Khairagarh,
Distt.-Rajnandgaon (C.G.).

&

WRIT PETITION No. 1659 OF 2002

Petitioner : Ku. Kiran Mall, aged about 31 years, D/o T.R. Mall, R/o Near Forest Naka, Dau Chourha, Khairagarh, Distt.- Rajnandgaon (C.G.).

Versus

Respondents : 1. State of Chhattisgarh, Through the Secretary, Environment & Town Development Department, D.K.S. Bhawan, Raipur.

2. Nagar Panchayat Chhuikhadan, through its Chief Municipal Officer, Nagar Panchayat, Chhuikhadan, Distt.- Rajnandgaon.

3. Umakant Mahobiya S/o Balbhadra Mahobiya, R/o Mahobiya Para, Chhuikhadan, Distt.- Rajnandgaon.

Present: Shri Jitendra Pali, counsel for the petitioners.
Miss Sunita Jain, counsel for the petitioner.
Shri Vinay Harit, Senior Advocate with Shri Sandeep Dubey, Deputy Govt. Advocate for the respondents No. 1 and 2.
Shri Amit Verma, counsel for the respondent No. 3.

ORAL ORDER

(2nd January, 2006)

Heard.

1. Learned counsel for the petitioners submits that the petitioners in W.P. No. 1589/2002, W.P. No. 1618/2002 and W.P. No. 1659/2002 were appointed by Chief Municipal Officer, Nagar Panchayat, Chhuikhadan by order dated 24.8.1998 as Shiksha

Karmis Grade-I, Grade-II and Grade-III. Since all the three petitions involved common question of law, hence, all the three petitions are being disposed of by this common order. The petitioners were given the appointment orders and they joined the service on respective posts. The petitioners continued to work as Shiksha Karmis Grade-I, Grade-II and Grade-III respectively.

2. The State Government, by its order dated 29.7.2002, while exercising its power Under section 331 of Chhattisgarh Nagar Palika Adhiniyam, 1961 passed in Case No. 3151/18/2002, quashed the resolution No. 1 passed by the Standing Committee of the Nagar Panchayat, Chhuikhadan in its proceedings dated 21.8.1998 and the Resolution No. 1 dated 8.9.1998 passed by the Education Committee, whereby the petitioners were appointed as Shiksha Karmis Grade-I, Grade-II and Grade-III respectively.

3. Shri Jitendra Pali, learned counsel appearing for the petitioners in W.P. No. 1589/2002 and W.P. No. 1618/2002 and Miss Sunita Jain, learned counsel appearing for the petitioner in W.P. No. 1659/2002 contend that the State Government cannot vary or reverse the order passed by the Nagar Panchayat, Chhuikhadan for selecting and appointing the petitioners on the posts of Shiksha Karmis without notice to the interested parties and without affording an opportunity of hearing in support of such orders.

4. Shri Vinay Harit, Senior Advocate with Shri Sumesh Bajaj, Advocate appearing for the State Government, per contra,

contended that the State Government is fully empowered in revision to satisfy itself as to the correctness, legality or propriety of any order passed by the Nagar Panchayat. Learned counsel further submitted that in the present case entire selection process has been quashed and as such it was not necessary to issue notice to the petitioners individually and to afford an opportunity of hearing. The State Government has issued notice to the concerned officers of Nagar Panchayat and has examined all the connected records.

5. Shri Amit Verma, learned counsel appearing for Nagar Panchayat, Chhuikhadan fairly submits that Nagar Panchayat, Chhuikhadan has appointed the petitioners after due approval by the selection committee through selection process, in accordance with law and the Nagar Panchayat has not conducted any enquiry or has not issued any show cause notice to the petitioners before passing the impugned termination order dated 2.8.2002. It was further contended that the Nagar Panchayat has acted and passed the impugned termination order on the direction of the State Government on the basis of its order dated 29.7.2002 passed in case No. 3151/18/2002.

6. I have heard learned counsel for the parties.

7. The State Government in exercise of its power of revision under Section 331 of the Chhattisgarh Municipalities Act, 1961 has passed the impugned order dated 29.7.2002. Proviso to Sub-section 2 of Section 331 clearly provides that the State Government cannot vary or reverse any order passed by the Additional Collector, prescribed authority or any officer

appointed or authorised by the State Government under this Act without issuing show cause notice to the parties interested to the appeal and without affording an opportunity of hearing in support of such order. Section 331 of the Act, 1961 reads as under:-

> "Power of State Government of Revision.-(1) The State Government may, for the purpose of satisfying itself as to the correctness, legality or propriety of any order passed by a Divisional Commissioner, Collector, prescribed authority or any officer appointed or authorised by the State Government under this Act, call for the connected records and may in doing so direct that pending the examination of the record such order be held in abeyance.
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> (2) On examining the records the State Government may modify or reverse the order of a Divisional Commissioner, Collector, prescribed authority or any other officer appointed or authorised by the State Government under this Act as it deemed fit:
>
> Provided that no order shall be varied or reversed unless notice has been given to the parties interested to appeal and to be heard in support of such order."

8. Learned counsel for the State Government fairly contended that no show cause notice was given to the petitioners who are instant parties and no hearing was affording in support of the order passed by the Nagar Panchayat.

9. Reliance on learned counsel on decision of the Supreme Court in **Union of India and others Vs. O. Chakradhar**[1] is not relevant to the facts of the present case because in the instant case the selection was not cancelled by the authorities who have

[1](2002) 3 Supreme Court cases 146

conducted the selection process and appointment orders have been passed there of. In the present case, the State Government has passed the impugned order in exercise of its Revisional power under section 331 of Chhattisgarh Municipalities Act, 1961. The State Government was required to give show cause notice to the parties concerned, affording an opportunity of hearing in support of the order which was subject matter of the revision. This petition deserves to be allowed on the short ground that the show cause notice and opportunity of hearing was not given to the petitioners, which is mandatory under the provisions of law. On the question of back wages the petitioners have not produced any evidence to show that the petitioners were not gainfully employed elsewhere. Even otherwise, in view of the fact the impugned termination order is held as invalid for non-compliance of principle of natural justice, the petitioners are entitled to 25% of back wages from the date of termination.

10. For the reasons stated above, the petitions are allowed and the impugned termination order dated 2.8.2002 passed by the Nagar Panchayat, Chhuikhadan pursuant to order dated 29.7.2002 passed by the State Government and order dated 29.9.2002 are quashed and set aside. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu